



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**Via Facsimile and First Class Mail**  
(202) 429-3301

**OCT 31 2014**

Trevor Potter, Esq.  
Matthew Sanderson, Esq.  
1 Thomas Circle, N.W.  
Washington, D.C. 20005

RE: MUR 6889  
National Air Transportation  
Association  
National Air Transportation  
Association PAC and Jason Miller in  
his official capacity as treasurer

Dear Messrs. Potter and Sanderson:

On August 14, 2013, you notified the Federal Election Commission (the "Commission"), in a *sua sponte* submission, of the possibility that your clients, National Air Transportation Association ("NATA"), National Air Transportation Association PAC and Jason Miller in his official capacity as treasurer ("NATA PAC"), may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with activity between December 2001 and August 2012.

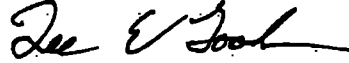
After reviewing your submission, the Commission found reason to believe, on October 21, 2014, that NATA violated 52 U.S.C. §§ 30118(a) and 30122 (formerly 2 U.S.C. §§ 441b(a) and 441f) and 11 C.F.R. §§ 110.4(b)(1)(i) and 114.2(b). The Commission also found reason to believe that NATA and NATA PAC violated 52 U.S.C. §§ 30118(a), 30122 and 30104 (formerly 2 U.S.C. §§ 441b(a), 441f and 434(b)) and 11 C.F.R. §§ 110.4(b)(1)(iv) and 114.2(d). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

On behalf of the Commission,



Lee E. Goodman  
Chairman

Enclosures  
Factual and Legal Analysis

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1 **FACTUAL AND LEGAL ANALYSIS**

2 **MUR 6889**

3  
4 **RESPONDENTS:**

National Air Transportation Association

5  
6 National Air Transportation Association  
7 PAC and Jason Miller<sup>1</sup> in his official  
8 capacity as Treasurer  
9

10 **I. INTRODUCTION**

11  
12 This matter originated with a *sua sponte* submission made to the Federal Election  
13 Commission ("the Commission") by the National Air Transportation Association ("NATA") and  
14 the National Air Transportation Association Political Action Committee and Jason Miller in his  
15 official capacity as Treasurer ("NATA PAC").

16 **II. FACTUAL SUMMARY**

17 **A. Background**

18 NATA is a national incorporated membership organization (trade association)  
19 representing aviation business service providers.<sup>2</sup> NATA is governed by a Board of Directors  
20 and its day-to-day operations are handled by its president, officers, and staff.<sup>3</sup> The available  
21 information suggests that James Coyne was NATA's President/CEO from 1998 to 2012; and  
22 Alan Darrow was NATA's Director of Finance and Administration and later its Vice President of  
23 Administration beginning in 1995 until his retirement in 2009. Eric Byer served at NATA as its  
24 Government Affairs Specialist from 1999 to 2003, Director of Government and Industry Affairs

<sup>1</sup> Jason Miller replaced Michael Delk as Treasurer of NATA PAC, effective July 17, 2013. *See* NATA PAC, Amended Statement of Organization (July 17, 2013).

<sup>2</sup> NATA Submission at 1, 7.

<sup>3</sup> NATA Submission at 1.

1 from 2003 to 2004, and Vice-President of Government & Industry Affairs from 2004 to August  
2 2012.<sup>4</sup>

3 NATA established NATA PAC on September 28, 1998.<sup>5</sup> Michael Delk was the PAC  
4 treasurer from 1998 until his resignation in July 2013.<sup>6</sup> Delk operates a NATA member  
5 company and resides in Salem, Oregon.<sup>7</sup> The available information indicates that Delk, upon  
6 agreeing to act as NATA PAC's treasurer, was informed that all PAC disclosure reporting  
7 related matters would be handled by an Assistant Treasurer located at NATA headquarters.  
8 Darrow was designated as the PAC Assistant Treasurer from 2001 to 2002.<sup>8</sup> Burnside was PAC  
9 Assistant Treasurer from 2002 to 2003.<sup>9</sup> Byer was the PAC Assistant Treasurer from October  
10 2003 to October 2012.<sup>10</sup> NATA PAC also retained an outside consultant who worked with Byer  
11 to file NATA PAC disclosure reports with the Commission.<sup>11</sup>

12 **B. The Contribution Reimbursement Plan**

13 **1. Inception and Operation**

14 In 2001, as Congress began to consider a reauthorization bill for the Federal Aviation  
15 Administration, members of NATA expressed concern that NATA PAC was "non-existent" in

<sup>4</sup> Although in his interview with NATA, Byer indicated that he had been promoted to Chief Operating Officer, counsel for NATA states that NATA had no such position. See E-Mail from Matthew Sanderson, Counsel, to Kimberly Hart, FEC (Mar. 6, 2014) ("Sanderson March 6, 2014 E-Mail").

<sup>5</sup> NATA Submission at 4; see NATA PAC, Statement of Organization (Sept. 28, 1998).

<sup>6</sup> NATA Submission at 13.

<sup>7</sup> *Id.*

<sup>8</sup> See NATA PAC, Amended Statement of Organization (May 22, 2001).

<sup>9</sup> See *id.*, Amended Statement of Organization (July 19, 2002).

<sup>10</sup> See *id.*, Amended Statement of Organization (Oct. 16, 2003).

<sup>11</sup> NATA Submission, App. B, Interview Memo for Whitney Burns at 2-3 (June 17, 2013) ("Burns MOI").

1 the political process.<sup>12</sup> As a result, Byer and Darrow met to discuss PAC participation.<sup>13</sup>  
2 During the meeting, they considered whether to pay employees extra compensation that could be  
3 diverted through payroll deductions to the PAC.<sup>14</sup> Byer claims that he suggested the idea after  
4 "picking it up" from colleagues at other trade associations, asserting that reimbursing  
5 contributions through compensation was "pretty predominant in other groups."<sup>15</sup> When asked  
6 about this meeting during NATA's internal review, Byer initially could not recall Darrow's  
7 reaction to the idea, but in a subsequent interview recalled that Darrow spoke in favor of the  
8 plan.<sup>16</sup>

9 In July 2001, Linda Barker, Chair of NATA and NATA PAC, presented the NATA  
10 Board of Directors with a recommendation to reimburse NATA employees for their  
11 contributions to NATA PAC.<sup>17</sup> The Board approved that recommendation and recorded it in the  
12 meeting minutes as follows: "The Board agreed with a recommendation by Mrs. Barker that  
13 interested staff members may make contributions to the PAC and that, if legal, the association  
14 can 'gross up' their salaries to offset the contribution."<sup>18</sup> Coyne was present at this meeting as a

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<sup>12</sup> NATA Submission at 5.

<sup>13</sup> *Id.*

<sup>14</sup> NATA Submission at 5; *see id.*, App. B, Interview Memo for Eric Byer at 5 (June 27 and Aug. 9, 2013) ("Byer MOI").

<sup>15</sup> Byer MOI at 4. During NATA's second interview with Byer, he stated that he initially suggested to Darrow that NATA employees contribute to the PAC from their own personal funds and claimed that he wanted the employee contributions to be "above-board." *Id.*

<sup>16</sup> Byer MOI at 4; NATA Submission at 5.

<sup>17</sup> NATA Submission, App. B, Interview Memo for Linda Barker at 4 (June 17, 2013) ("Barker MOI").

<sup>18</sup> NATA Submission, App. E, Minutes for NATA Board of Directors Meeting in Couer d'Alene, Idaho (July 9-10, 2001) ("Board of Directors Meeting Minutes").

1 member of the Board, Darrow attended as "Staff," and Delk attended as a "Guest."<sup>19</sup> Byer is not  
2 listed as an attendee.<sup>20</sup> In her interview, Barker did not recall any details beyond what was  
3 recorded in the Minutes, but noted that "it was pretty much staff driven if I remember correctly.  
4 I don't think I came up with that idea."<sup>21</sup> Barker "supposed" she worked with Coyne on the PAC  
5 but did not recall having any discussions with Darrow or Byer.<sup>22</sup>

6 After the NATA Board meeting, either Byer or Darrow then explained how to make the  
7 reimbursements to the payroll manager, Johanna O'Toole, and Byer told her to enroll the  
8 employees.<sup>23</sup> The first salary increases and corresponding payroll deductions began in  
9 December 2001.<sup>24</sup> Initially, each participating employee's pay was increased \$3,900 per year,  
10 \$3,000 of which was deducted as a contribution to NATA PAC and the additional \$900 intended  
11 to cover any tax liability resulting from the increased pay.<sup>25</sup> NATA states that in 2009, PAC  
12 contributor's salaries were increased at Byer's request to \$6,500 per year, with up to \$5,000  
13 deducted as a PAC contribution and \$1,500 intended to offset tax liability.<sup>26</sup> As a result of this  
14 arrangement, between December 2001 and August 15, 2012, 20 NATA employees, including

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19 *Id.*

20 *Id.*

21 Barker MOI at 2.

22 *Id.* at 3.

23 NATA Submission, App. A, Aff. of Johanna O'Toole ¶¶ 6-8 (Aug. 1, 2013) ("O'Toole Aff.").

24 NATA Submission at 5.

25 O'Toole Aff. ¶¶ 10-11; NATA Submission at 5-6; see NATA Submission, App. F, Salary and Bonus Worksheets (2012-2011, 2009-2004) ("NATA Salary and Bonus Worksheets").

26 O'Toole Aff. ¶ 11; NATA Submission at 6; NATA Salary and Bonus Worksheets.

1 Byer and Darrow, made \$214,353 in contributions to NATA PAC in their names using NATA  
2 funds.<sup>27</sup>

3 NATA counsel asserts that Byer initially denied that he knew that any NATA employees'  
4 compensation had been increased to reimburse contributions until counsel presented him with  
5 e-mails that showed Byer solicited employees to participate in the contribution reimbursement  
6 plan, at which point Byer acknowledged his involvement.<sup>28</sup> The NATA payroll manager,  
7 O'Toole, states that she was present for a discussion between Byer and Darrow after the program  
8 began during which they discussed how the program would operate.<sup>29</sup> She recalls that Byer  
9 discussed the amount the employees would receive and described how that amount would then  
10 be deducted and contributed to NATA PAC.<sup>30</sup> According to her, Darrow responded that this  
11 could not be done unless there was also an amount provided to each employee to account for the  
12 increased taxes the employee would incur.<sup>31</sup> The available information indicates that while  
13 Darrow may not recall the meeting, it would not have been unreasonable for him to attend such a  
14 meeting or to express concern about employees being personally responsible for any tax liability  
15 resulting from their increased compensation. Further, the available information indicates that

<sup>27</sup> NATA Submission at 6-7. NATA stated that it has no information to suggest that the compensation arrangement was extended to non-employees or to employees who gave to committees other than NATA PAC. *Id.* at 7.

<sup>28</sup> Byer MOI at 3.

<sup>29</sup> O'Toole Aff. ¶ 6.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* O'Toole also stated that it was her understanding that the additional compensation was based on an employee's willingness to contribute to NATA PAC, and was intended to cover both the amount of each employee's contribution to the PAC and the increased tax each employee might experience because of the additional salary. *Id.* ¶ 7.



1 Darrow would not have found it uncommon to increase compensation to offset certain benefits  
2 that employees must pay directly.

3 Notwithstanding the indication in the minutes of the July 2001 Board meeting that the  
4 Board's approval was contingent on the legality of the program, Byer asserts that he does not  
5 recall anyone at NATA seeking legal advice concerning the lawfulness of the proposed  
6 contribution reimbursement plan before it was implemented.<sup>32</sup> But Whitney Burns, NATA's  
7 outside PAC consultant, contends that she told Byer in approximately 2001 that contributions  
8 must be voluntary and could not be compensated, and further asserts that she provided Byer with  
9 materials regarding the prohibition against reimbursed contributions.<sup>33</sup> In his first interview with  
10 counsel for NATA, Byer did not recall any conversation with Burns regarding the legality or  
11 propriety of the contribution reimbursement plan.<sup>34</sup> In a second interview, however, he stated  
12 that he recalled that Burns told him that employees could contribute to the PAC and that  
13 employees could make their contributions via payroll deduction, but continued to assert that he  
14 could not recall any discussion about increased employee compensation related to PAC  
15 contributions.<sup>35</sup>

<sup>32</sup> Byer MOI at 4.

<sup>33</sup> Burns MOI at 4, 5. In addition, Burns recalled faxing Byer a five-page excerpt from the Commission's campaign guide for corporations, but this excerpt did not address the prohibitions on corporate contributions and contributions in the name of another. *Id.*, App. E (copy of the facsimile of the five-page excerpt); *see also id.*, App. F, Email from Whitney Burns to Eric Byer and Kristen Moore (Apr. 2, 2010) (stating that "[i]t is each employee's decision as to how much to contribute to the PAC, not the accounting office's decision. Attached is a form we may want to start using for the employees to authorize their deductions and make changes. You can suggest and recommend amounts, but it is ultimately the employee's decision how much and when (up to the \$5000 annual contribution limit.)). Byer claimed that he recalled having a conversation with Burns in which she advised him that employees could legally contribute to the PAC and could do so through payroll deductions, but does not recall talking about the proposal to compensate employees for their PAC contributions. *See* Byer MOI at 4, n.7.

<sup>34</sup> Byer MOI at 4.

<sup>35</sup> *Id.* at 4, n. 7.

1 In its Submission, NATA asserts that most of the employees whose contributions to the  
2 PAC were reimbursed lacked sufficient experience or knowledge of the program to suspect that  
3 the arrangement might be prohibited.<sup>36</sup> Others did not question the arrangement because Byer  
4 assured them that it was common practice.<sup>37</sup> Some employees claim that they raised concerns  
5 with Byer about the arrangement. For instance, Timothy Heck had a conversation with Byer  
6 about the PAC contribution program shortly after he was hired as NATA's Vice-President of  
7 Financial Operations in October 2009.<sup>38</sup> During this conversation, Heck raised concerns about  
8 the propriety and legality of the PAC contribution program, and Byer assured him that  
9 everything was "above the table."<sup>39</sup> According to Heck, Byer further responded that he had  
10 "checked it out" with NATA's PAC consultant.<sup>40</sup> Heck stated that, despite Byer's assurance, the  
11 PAC contribution program did not "look kosher" and he was not comfortable with participating,  
12 so he did not.<sup>41</sup>

13 According to O'Toole, she overheard a "heated" conversation between Heck and Byer  
14 after Heck asked her to explain the way the reimbursement program worked.<sup>42</sup> She states that  
15 she did not hear the entire conversation but heard Heck say something to the effect of "You can't  
16 do it. It's not legal," to which Byer responded, "Everybody does it. The program will

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<sup>36</sup> NATA Submission at 9.

<sup>37</sup> *Id.*

<sup>38</sup> NATA Submission, App. B, Interview Memo for Timothy Heck at 3 (June 18, 2013) ("Heck MOI").

<sup>39</sup> Heck MOI at 3.

<sup>40</sup> *Id.* at 4.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> O'Toole Aff. ¶ 17.

1 continue.”<sup>43</sup> O’Toole did not recall hearing any description of why Heck believed the program  
2 was illegal or improper.<sup>44</sup> According to O’Toole, this was the first time that she had heard  
3 anything about the program that made her question whether it was “right.”<sup>45</sup> After several casual  
4 conversations with Heck in which he told her that he would not be involved with the program  
5 and suggested that she terminate her participation, she withdrew as well.<sup>46</sup> In his interview, Byer  
6 recalled that Heck may have raised an issue about it because he would have been making sure  
7 that it was “above board because Tim is an above-board guy.”<sup>47</sup> In addition, Mike France,  
8 another NATA employee, claims that Byer or Kristen Moore told him that while NATA could  
9 not contribute money to the PAC directly, “it was okay” and “totally legal” for NATA to “give  
10 the money to employees for the contribution.”<sup>48</sup>

11 **C. NATA PAC Disclosure Reports Filed With Unauthorized Signatures**

12 According to the Submission, Michael Delk, NATA PAC’s Treasurer from 1998 until  
13 2013, never reviewed, examined, or signed any of the electronically filed disclosure reports that  
14 NATA PAC submitted to the Commission, although each report bears his signature.<sup>49</sup> Therefore,  
15 the Submission acknowledges NATA PAC’s “reports were not properly verified under

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* ¶ 19.

<sup>46</sup> *Id.*

<sup>47</sup> Byer MOI at 5. Byer stated that he could not recall any other details about the conversation. *Id.*

<sup>48</sup> NATA Submission, App. B., Aff. of Mike France ¶ 6 (July 15, 2013) (“France Aff.”).

<sup>49</sup> NATA Submission at 13. NATA began filing its PAC reports electronically in 2001. *Id.* at 13.

Commission rules because they featured the signature of an individuals who did not examine them and certify their accuracy” in violation of 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.18(g).<sup>50</sup>

The available information suggests that when Delk was recruited to serve as Treasurer in 1998, he was assured that the treasurer’s duties would be handled by an assistant treasurer who would also be a staff member of NATA working in Virginia, where NATA and NATA PAC operations were based.<sup>51</sup> Accordingly, he never reviewed, examined, or signed any of NATA’s disclosure reports, but notes that he also did not authorize anyone to sign or file the reports electronically on his behalf.<sup>52</sup>

#### **D. Corrective Actions**

NATA contends that its internal review determined that the contribution reimbursement plan and inadequate filing practices resulted from the actions of a few former executives whose campaign-finance related activities were inadequately monitored, pointing to NATA and the PAC’s “immature control structure at the time and because of a lack of education about federal campaign finance laws” among NATA Board members and employees.<sup>53</sup> NATA asserts that its leadership has moved quickly and decisively to address these issues in a manner recommended

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<sup>50</sup> *Id.* at 13.

<sup>51</sup> See NATA Submission, App. B, Interview Memo for Michael Delk at 2 (June 12, 2013) (“Delk MOI”). Delk also states that he did not have any professional experience as a treasurer. *Id.* Although the available information suggests that Byer recruited Delk for the position of treasurer in 1998, NATA’s records indicate that Byer did not begin his employment with NATA until 1999. See Sanderson March 6, 2014 E-Mail. It is possible that Delk is mistaken regarding the NATA staff member who recruited him to be PAC Treasurer but clear as to his lack of participation in any substantive form as treasurer.

<sup>52</sup> Delk MOI at 2. Delk’s assertion that he never authorized any reports is confirmed by the statements of Burns, the PAC consultant who prepared and filed NATA PAC’s disclosure reports. Burns MOI at 2-3. According to the consultant, Burns, she worked directly with Byer on PAC disclosure matters until he was promoted (in 2004) and turned over the day-to-day management of those matters to Kristen Moore. *Id.* at 2. However, as to the use of his signature, the consultant stated that it “was implicit” that others could sign on Delk’s behalf and that “it was something that we talked about.” *Id.* at 3. After receiving approval, she filed the disclosure reports, *id.*, which featured Delk’s signature. NATA Submission at 13.

<sup>53</sup> NATA Submission at 14,

1 by its legal counsel.<sup>54</sup> NATA further claims that it should not itself bear liability for the scheme  
2 because its employees acted outside the scope of the Board's approval when they either failed to  
3 confirm the program's legality or possibly acted despite understanding that the arrangement may  
4 be prohibited.<sup>55</sup>

5 NATA has undertaken a number of corrective actions since it uncovered the unlawful  
6 conduct, including: (1) replacing the executives and consultants involved in the contribution  
7 reimbursement plan with more experienced professionals to ensure the organization's future  
8 compliance with federal campaign finance laws; (2) hiring three new compliance firms to consult  
9 with on an ongoing basis; (3) hiring of a new Executive Vice-President (James Coon) with 30  
10 years of legislative and political experience to replace Byer;<sup>56</sup> (4) hiring of a certified public  
11 accountant, Jason Miller, as an independent Chief Financial Officer and PAC Treasurer;  
12 (5) adopting formal articles of organization;<sup>57</sup> (6) adopting internal policies such as regular  
13 employee compliance training, and a biennial audit by outside compliance firm; and  
14 (7) recommending that NATA's Board and a new NATA PAC Board more closely monitor the  
15 activities of those NATA executives who perform PAC-related duties.<sup>58</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 10.

<sup>56</sup> NATA's counsel informed OGC in January 2014 that Coon recently resigned from NATA.

<sup>57</sup> NATA Submission at 14; *id.*, App. L, NATA PAC Articles of Organization (July 2, 2013).

<sup>58</sup> NATA also ratified a Political Activity Policy that has been distributed to all employees and will be provided to all future hires. NATA Submission at 15; *id.*, App. L, NATA PAC Political Activity Policy. That policy, among other things, expressly prohibits the reimbursement of political contributions, describes rules applicable to the political activity of NATA employees, and establishes clear lines of responsibility for approving certain conduct. *Id.*

1     **III.     LEGAL ANALYSIS**

2             **A.     Reimbursed Contributions**

3             The Act prohibits corporations from making contributions to a federal political  
4     committee (other than independent expenditure-only political committees)<sup>59</sup> and further prohibits  
5     any officer of a corporation from consenting to any such contribution by the corporation.<sup>60</sup>  
6     Likewise, a political committee is prohibited from knowingly receiving prohibited  
7     contributions.<sup>61</sup> The Act also provides that “no person shall make a contribution in the name of  
8     another person.”<sup>62</sup> That prohibition extends to knowingly permitting one’s name to be used to  
9     effect the making of a contribution in the name of another or, under the Commission’s  
10    implementing regulation, to knowingly helping or assisting “any person in making a contribution  
11    in the name of another.”<sup>63</sup> The Commission has explained that the provisions addressing those  
12    who knowingly assist a conduit-contribution scheme apply to “those who initiate or instigate or  
13    have some significant participation in a plan or scheme to make a contribution in the name of  
14    another.”<sup>64</sup>

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<sup>59</sup>     See, e.g., Advisory Op. 2010-11 (Commonsense Ten) (concluding that corporations and unions may make unlimited contributions to independent-only political action committees because “independent expenditures do not lead to, or create the appearance of *quid quo pro* corruption”) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)) (emphasis in original).

<sup>60</sup>     52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(b), (e). A corporation’s solicitation of its executive and administrative personnel for contributions to its separate segregated fund is not considered a contribution or expenditure. See *id.* § 30118(b)(2)(C) (formerly § 441b(b)(2)); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.7(a).

<sup>61</sup>     11 C.F.R. § 114.2(d).

<sup>62</sup>     52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f); 11 C.F.R. § 110.4(b)(1)(i).

<sup>63</sup>     11 C.F.R. § 110.4(b)(1)(ii), (iii).

<sup>64</sup>     Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,105 (Aug. 17, 1989) (“E&J”).

1           The Act prescribes additional monetary penalties for violations that are knowing and  
2 willful.<sup>65</sup> A violation of the Act is knowing and willful if the “acts were committed with full  
3 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”<sup>66</sup> This  
4 does not require proving knowledge of the specific statute or regulation the respondent allegedly  
5 violated.<sup>67</sup> Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was  
6 aware that his conduct was unlawful.”<sup>68</sup> This may be shown by circumstantial evidence from  
7 which the respondents’ unlawful intent reasonably may be inferred.<sup>69</sup> For example, a person’s  
8 awareness that an action is prohibited may be inferred from “the elaborate scheme for disguising  
9 . . . political contributions.”<sup>70</sup>

10           **B.     NATA Made and NATA PAC Accepted Prohibited Contributions Made in**  
11           **the Names of Others**

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13           Former NATA executives Byer and Darrow, who at different times each served as  
14 Assistant Treasurer of NATA PAC, caused NATA to use corporate funds to reimburse

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<sup>65</sup> See 52 U.S.C. § 30109(a)(5)(B) (formerly 2 U.S.C. § 437g(a)(5)(B), § 30109(d) (formerly § 437g(d)).

<sup>66</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>67</sup> *United States v. Danielczyk*, \_\_\_ F. Supp. 2d \_\_\_, 2013 WL 124119, \*5 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>68</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008); and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

<sup>69</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>70</sup> *Id.* at 214-15. As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 employees for contributions to NATA PAC.<sup>71</sup> Under the direction of Darrow from 2001 to  
2 2003, and Byer from 2003 to 2012, NATA increased the salaries of those employees who agreed  
3 to make a contribution in their names to NATA PAC to offset the cost of the contributions and  
4 any resulting tax liability.<sup>72</sup> This scheme resulted in the reimbursement of \$214,353 in  
5 contributions and continued for eleven years. Accordingly, the Commission found that there is  
6 reason to believe that NATA made, and NATA PAC and its treasurer in his official capacity  
7 accepted, prohibited contributions made in the names of others.

8 Moreover, in approving the contribution reimbursement program, the Board stipulated  
9 that "interested staff members may make contributions to the PAC and that, if legal, the  
10 association can 'gross up' their salaries to offset the contributions."<sup>73</sup> Despite the Board's  
11 acknowledgment that "grossing up" a contribution using NATA funds may be prohibited, the  
12 Board apparently did nothing to ensure that anyone took any step to assess the program's  
13 legality. Instead, the reimbursement scheme was implemented and continued its course for  
14 eleven years without any supervision from the NATA and NATA PAC Board. Accordingly,  
15 there may also be a fair basis to support a finding that NATA, through the approval of its Board

<sup>71</sup> In addition, a principal is liable vicariously for the acts of its agent committed within the scope of that agency. RESTATEMENT (THIRD) OF AGENCY § 7.07; *see also United States v. Sun-Diamond Growers of Cal.*, 138 F.3d 961 (D.C. Cir. 1998) (affirming criminal convictions against Sun-Diamond in connection with a corporate contribution reimbursement scheme where an officer hid the scheme from others in the corporation but acted to benefit the corporation). In prior enforcement actions, the Commission has, on that basis, found that legal entities such as NATA and NATA PAC may have violated the Act as a result of the conduct of their officers or employees. *See* MUR 6515 (PFFW) (finding reason to believe that Professional Firefighters of Wisconsin, a union, knowingly and willfully violated 52 U.S.C. §§ 30118 and 30122 (formerly 2 U.S.C. § 441b and 441f) based on the activities of its executive board members); MUR 6143 (Galen Capital) (finding reason to believe that Galen Capital, a corporate entity, knowingly and willfully violated 52 U.S.C. §§ 30118 and 30122 (formerly 2 U.S.C. § 441b and 441f) based on the activities of an executive board member).

<sup>72</sup> The available information suggests that Darrow was delegated the responsibility for the PAC operations in 2001. Byer took over those responsibilities in 2003 when he was promoted from NATA's Government Affairs Specialist to Director of Government and Industry in 2003. *See* Sanderson March 6, 2014 E-Mail.

<sup>73</sup> NATA Submission at 5; *see id.*, Board of Directors Meeting Minutes.



1 and its failure to resolve its acknowledged concern about the legality of the program, acted  
2 knowingly and willfully in connection with the contribution reimbursement scheme it authorized.

3 Nonetheless, as a matter of policy the Commission has concluded that it may in  
4 appropriate circumstances “[r]efrain from making a formal finding that a violation was knowing  
5 and willful, even where the available information would otherwise support such a finding.”<sup>74</sup> In  
6 this matter, NATA and NATA PAC not only made a full *sua sponte* submission but have  
7 cooperated extensively, brought substantial information to the attention of the Commission in  
8 connection with the matter, and have voluntarily incorporated significant remedial and  
9 compliance measures in their practices. For this reason, the Commission did not conclude that  
10 that NATA or NATA PAC knowingly and willfully violated the Act and Commission  
11 regulations.

12 Accordingly, the Commission found reason to believe that the National Air  
13 Transportation Association violated 52 U.S.C. §§ 30118(a) and 30122 (formerly 2 U.S.C.  
14 §§ 441b(a) and 441f and 11 C.F.R. § 110.4(b)(1)(i) and 114.2(b). The Commission also found  
15 reason to believe that the National Air Transportation Association PAC and Jason Miller in his  
16 official capacity as treasurer violated 52 U.S.C. §§ 30118(a) and 30122 (formerly 2 U.S.C.  
17 §§ 441b(a) and 441f and 11 C.F.R. §§ 114.2(d) and 110.4(b)(1)(iv).

18 **C. NATA PAC Submitted Inaccurate Disclosure Reports**

19 As discussed above, former NATA executives Byer and Darrow, who at different times  
20 each served as Assistant Treasurer of NATA PAC, caused NATA to use corporate funds to  
21 reimburse employees for contributions to NATA PAC. Under the direction of Darrow from  
22 2001 to 2003, and Byer from 2003 to 2012, NATA increased the salaries of those employees

<sup>74</sup> *Sua Sponte* Policy, 72 Fed. Reg. at 16,696.

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1 who agreed to make a contribution in their names to NATA PAC to offset the cost of the  
2 contributions and any resulting tax liability. This scheme resulted in the reimbursement of  
3 \$214,353 in contributions and continued for eleven years. NATA PAC is required to file  
4 accurate Commission disclosure reports concerning its receipts. It failed to do so in relation to  
5 the contributions that were reimbursed by NATA. Accordingly, the Commission found reason to  
6 believe that NATA PAC and Jason Miller in his official capacity as treasurer violated 52 U.S.C.  
7 § 30104(b) (formerly 2 U.S.C. § 434(b)).

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